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SUBJECT: SOUTH AFRICA: TELECOM REGULATOR STRUGGLES FOR
INDEPENDENCE

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[1](#)1. (SBU) Summary. South Africa's beleaguered telecommunications regulator, ICASA (Independent Communications Authority of South Africa), received a bit of good news when constitutional changes guaranteeing the regulator's independence were proposed to Parliament June 22. The Minister of Communications has made repeated attempts to gain control of ICASA through pending legislation. The regulator has been struggling to operate effectively as three of seven councilors are departing, four of five senior managers have quit, the CEO has been suspended and the chairperson's management ability is under attack. Industry analysts believe that ICASA's independence and capacities must be strengthened to implement new legislation targeted at increasing competition in the high-cost telecommunications sector dominated by the parastatal monopoly Telkom. End Summary.

Regulator Struggles for Independence, But ...

[1](#)2. (SBU) The South African Parliament's Constitutional Review Committee has recommended changing the constitution's definition of ICASA from "broadcasting regulator" to a more accurate "electronic communications regulator". The Committee seeks the change to assure that ICASA will be afforded special protection under section 192 of the constitution, allowing the regulator to remain independent.

[1](#)3. (SBU) The recommendation is the latest development in pending legislation targeted at converging regulations in the communications sector. In December 2005, Parliament passed and sent to President Mbeki for signature the Electronics Communication Bill (formerly known as the Convergence Bill) and the ICASA Amendment. The Bill and the Amendment are inextricably linked as the Amendment gives ICASA the authority to implement the Bill. Prior to passage, Minister of Communications Ivy Matsepe-Casaburri had succeeded in having last-minute changes made to the Amendment in order to gain greater control over the regulator. The telecommunications industry, supportive of a strong independent regulator, cried foul. Mbeki subsequently refused to sign the Amendment and instead sent it to the Constitutional Review Committee with a request that it determine whether ICASA should enjoy the same special protection which guarantees independence that other South African regulators have. The Committee agreed and is now engaged in a lengthy process to change wording in the constitution.

[1](#)4. (SBU) ICASA has long battled with the Minister of Communications to maintain its independence. The Minister already indirectly influences the regulator as ICASA is prohibited from collecting fees

for its services and must rely on the Minister for funding. The Amendment would give the Minister more control through the power to hire and fire the seven ICASA councilors, a duty now handled by parliament and protected under section 192 of the constitution (Ref B). During the Constitutional Review Committee hearings the Minister's Director General Lyndall Shope-Mafole recommended that the word "independence" be stripped from the regulators title. Leaders of the largest opposition party, the Democratic Alliance, called for Matsepe-Cassaburri's resignation. Mbeki's rejection of the Minister's changes to the Amendment is widely seen as a rebuke.

Faces Management Crisis; Meanwhile ...

15. (SBU) The Committee's support for ICASA's independence is good news. Unfortunately, ICASA is in the midst of a major management crisis which will leave it a weakened organization, at least in the short term. Chairman Paris Mashile, who took his position in July 2005 after serving three months as a councilor, is widely viewed by the telecommunications industry as a political compromise, who tends to side with the Minister. Since taking his seat as chair, Mashile has seen his CEO Jackie Manche suspended in November for alleged misconduct. Three of the seven ICASA councilors are leaving this month, and Parliament's ability to name replacements has been hampered by the pending convergence legislation. One of the departing councilors, Mamodupi Mohala, came under conflict-of-interest scrutiny last month for being paid to do legal and consulting work for telecom providers while serving as councilor. Four of ICASA's top five managers have quit, and many other senior employees have left, often to work in the better-paying, more stable private sector. Meanwhile, Mashile also came under personal attack last month when exit reports from former ICASA employees were leaked to the press. The reports allege that

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Mashile arrived late to work, slept on the job and went on junkets paid for by the same telecommunication firms he is responsible for regulating. Industry experts seriously question Mashile's and ICASA's ability to implement sweeping legislative changes contained in the Electronic Communications Bill which is likely to embroil ICASA in litigation and increase workloads.

High Telecoms Costs Hinder Growth.

16. (SBU) South Africa is plagued with extraordinarily high telecommunication prices, which economists and senior government officials, including the President, say are hampering growth. In his February 2005 State of the Nation address Mbeki condemned high fixed-line prices stating they cost ten times more than in developed countries (Ref A). The Electronic Communications Bill seeks to converge regulation within the sector and open it up for competition. Convergence would bring together services now offered separately by traditional fixed-line, mobile and data services providers. The Bill allows competing telecommunication providers, mainly internet providers, to either use the nation's fixed-line infrastructure built and owned by parastatal monopoly Telkom or to build their own networks (Ref A). A second national operator (SNO) was licensed by ICASA in December 2005 and is expected to begin fixed-line operations later this year (Ref C). The SNO will have access to Telkom's local loop infrastructure for a two-year period and is seeking interconnect agreements with Telkom and the mobile operators. However, industry analysts predict the SNO's market entry will do little to lower telecom prices for most South Africans as the SNO plans to concentrate on the business-to-business market segment. Some market liberalization and price competition has occurred in the cellular phone market segment which enjoys three established operators, and a fourth, Virgin Mobile, entered the cell phone market in late June. Number portability between cell phone providers is set to begin next month allowing cell phone users to switch providers without changing phone numbers.

17. (SBU) Comment. Building ICASA's capacity, and implicitly its independence, primarily through assistance from the Federal Communications Commission remains a key Mission goal. A third round

of FCC-ICASA consultations is currently held up while ICASA deals with its management and legislative issues. TEITELBAUM